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Roberts

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

20142

FILE: B-205379

DATE: November 30, 1981

MATTER OF: Harris Manufacturing Corporation

DIGEST:

1. Allegations of a "buy-in," which would result in a loss contract, and awardee's inability to perform the contract provide no legal bases upon which award may be challenged. Rejection of a bid as extremely low requires the agency to find the bidder nonresponsible.
2. GAO does not review affirmative determinations of responsibility absent circumstances not present here.

Harris Manufacturing Corporation protests the award of a contract to Southwest Truck Body under the Department of the Army's invitation for bids No. DAAEC7-81-B-A377. Harris alleges that the low Southwest bid constituted a "buy-in" which will result in a loss contract. Furthermore, Harris suggests that Southwest may lack the financial resources to successfully perform the contract at its low bid price. We will not consider this protest.

The possibility of a "buy-in" or the submission of a below cost bid is not a proper basis upon which to challenge the validity of a contract award. See, e.g., Inter-Con Security Systems, Inc., B-189165, June 15, 1977, 77-1 CPD 434. In this regard, we note that although Defense Acquisition Regulation § 1-311 (1976 ed.) discourages a "buy-in," it does not prohibit one. Therefore, we would not have a legal basis for objecting to the Army's award of a contract to Southwest even if a "buy-in" could be established. Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362.

Proper rejection of a bid as extremely low requires a determination on the part of the procuring agency that the bidder is nonresponsible. See, e.g., Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. This Office,

however, does not review protests which question an affirmative determination of responsibility, such as the one made when the Army awarded the contract to Southwest, except in circumstances not pertinent here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel